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Nos. 800 and 969 Oct. T. 1967

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

WORLD AIRWAYS, INC., *et al.*,

Petitioners,

—v.—

PAN AMERICAN WORLD AIRWAYS, INC., *et al.*

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,

Petitioner,

—v.—

PAN AMERICAN WORLD AIRWAYS, INC., *et al.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONSE TO MOTION TO SUPPLEMENT PETITION FOR REHEARING

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Of Counsel

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Respondents, Pan American World Airways, Inc., *et al.*, oppose the motion of petitioners, World Airways, Inc., *et al.*, for leave to supplement their petition for rehearing filed with the Court in June 1968.

What petitioners really seek by this motion is the vacating of the judgments of this Court and of the Court of Appeals as a step, in effect, toward seeking an ultimate

reversal of the judgment below sustaining respondents' position in the review proceeding. Respondents submit there is no valid basis and no necessity for the relief petitioners now seek. Congress itself in the Act of September 26, 1968 (Public Law 90-514*), relied upon by petitioners in their motion, granted them relief from the effect of these judgments by validating, ratifying and continuing in effect their certificates "notwithstanding any contrary determinations by any court" (*ibid.*, Sec. 2).

Thus the issues sought to be raised by petitioners' petition for rehearing, their supplement thereto and this present motion to supplement these papers are now moot by reason of the September 1968 Congressional enactment, and there is no longer any need for either the petition for rehearing or this motion.

Furthermore, petitioners' motion would lead to one and possibly two undesirable results. First, a judgment adjudicating a case which construed one statute (Public Law 87-528, the "1962 Act") would be set aside by reason of the subsequent enactment of another and different statute, the 1968 Act. The courts' judgments with respect to the 1962 Act were sound when rendered. There is no dispute that the 1968 Act was designed to amend the 1962 Act so as to meet the objections raised by respondents and vindicated by the judgments now sought to be vacated. No subsequent statute can properly be applied for the purpose of redetermining at this juncture the correctness of an earlier decision which interpreted a statute that has been substantially amended in the very area at issue, as was the case here.

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* Reprinted in full as Appendix to Motion to Supplement Petition for Rehearing, following page 3.

Second, the judgments now sought to be vacated sustained respondents' review proceeding in the Court of Appeals, which was prosecuted at substantial expense to them. That court taxed costs in favor of respondents in the amount of $10,952.86, which have not yet been collected because of the stay of the mandate of this Court pending action on petitioners' petition for rehearing filed in June 1968. The vacating of this Court's judgment of May 27, 1968, as sought in the present motion, may have the effect of preventing recovery of costs justifiably awarded to respondents by the Court of Appeals.

Accordingly, we submit that petitioners have already obtained from Congress the relief they are seeking by their petition for rehearing and this motion; that there is no need for this Court to take any further action with respect to the prior judgments in this case; and that the relief sought may substantially prejudice respondents. The motion to supplement the petition for rehearing should therefore be denied.

Dated: New York, New York
October 1968

Respectfully submitted,

EDWARD R. NEAHER
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New York, New York 10004
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GERTRUDE S. ROSENTHAL
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CERTIFICATE OF SERVICE

I, GERTRUDE S. ROSENTHAL, hereby certify that:

1. I am a member of the Bar of this Court.

2. I have this day served the attached Response to Motion to Supplement Petition for Rehearing by depositing true copies thereof in a Letter Box maintained and exclusively controlled by the United States at 25 Broadway, New York, New York 10004, with first class postage prepaid, addressed to the following counsel of record in this action at the addresses designated by them, as follows:

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